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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 280

THE LUG-ALL COMPANY,

Petitioner,

vs.

LITTLE MULE CORP., ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ANSWER TO PETITION FOR WRIT OF CERTIORARI

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THE BLAKELY-HARRIS PRINTING COMPANY, CHICAGO

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No Basis for Supreme Court Review Is Present.

1. In the first place, the Petition is inaccurate in its statements:

(a) At the top of page 4 it implies that the Court of Appeals did not see the physical specimens involved. The opinion of the Court points out, at the foot of page 20 of the appendix, that it did have these before it.

(b) At the same point Petitioner alleges that the trial judge saw the witnesses. The Court of Appeals points out in the same footnote that what the trial court relied upon was deposition testimony and that there was no charge that any witness was lacking in credibility.

(c) The Petition states in the same paragraph at the top of page 4 that no appeal was taken from the findings of fact as to invention. The record shows at pages 312-317 that the findings of fact were all appealed from, and this particular finding of fact was appealed from both generally and specifically. See Appeal Points 5, 13 and 14.

There Is No Conflict Between Circuits.

Petitioner asserts that many of the Circuit Courts of Appeals have found that the validity of a patent is a question of fact and that as such the Court of Appeals here was precluded from reconsidering it. Petitioner fails to mention that the opinion of this Court in *Great A. & P. Co. v. Supermarket Equipment Corp.*, 340 U. S. 147 at 153-4 is controlling.

The Court of Appeals below carefully pointed out (page 20 of the appendix to petition) that even if it were bound to a presumption of correctness of the trial court's findings, it did not consider that there was substantial evidence to support them. The facts were documentary, except for expert opinion. The application of these facts to the law is legal.

The Court of Appeals also made clear that as a matter of law the burden was on the plaintiff to prove that the Anglemeyer patent, which was filed before the Wallace patent, was actually antedated by Wallace; otherwise its presumption of validity remained. The District Court, in finding Wallace valid, excluded the Anglemeyer patent from its consideration because the Patent Office had been induced by a self-serving affidavit of Wallace to do so. Under the authority of *Messler v. U. S. Rubber Co.*, 148 F. 2d 734, 736-7 (CA 2), such a self-serving affidavit is not evidence and actual evidence must be presented. The failure of the District Court to consider the most pertinent patent reference is sufficient to destroy its conclusion.

As the Court of Appeals found (appendix, page 17), Wallace simply took the Anglemeyer patent and used a known spring in it.

Petitioner's Position Is Completely Without Equity.

Wallace obtained a patent from the Patent Office, first, by a self-serving affidavit that he was ahead of Anglemeyer but he was never able to prove it in Court. Secondly, he said that Wallace had made a real contribution by making one spring serve the place of three.

Having asserted that this was his invention, Wallace's assignee completely reversed his field by charging that the respondents' use of three springs plus a cam did the same job in the same way.

The Court of Appeals might well have held no infringement of the Wallace claims but it chose to accept petitioner's own broad construction of the claims and hold them invalid on that basis.

Conclusion.

The petition should be denied.

Respectfully submitted,

LITTLE MULE CORP.,
ALUMINUM PRODUCTS CO.,
Respondents.

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